



ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[EPA-R07-OAR-2022-0422; FRL-9838-02-R7]

#### Air Plan Approval; Missouri; Construction Permit Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Missouri State Implementation Plan (SIP) received on June 10, 2021. The submission revises Missouri's regulation on construction permit exemptions. These revisions update incorporations by reference, remove unnecessary words, and make minor clarifications and grammatical changes. These revisions do not impact the stringency of the SIP or have an adverse effect on air quality. The EPA's approval of this rule revision is being done in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2022-0422. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available

docket materials are available through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

**FOR FURTHER INFORMATION CONTACT:** Bethany Olson, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551-7905; email address: [olson.bethany@epa.gov](mailto:olson.bethany@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” and “our” refer to the EPA.

## **Table of Contents**

- I. What is Being Addressed in this Document?
- II. Have the Requirements for Approval of a SIP Revision Been Met?
- III. The EPA’s Responses to Comments
- IV. What Action is the EPA Taking?
- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

### **I. What is Being Addressed in this Document?**

The EPA is approving revisions to the Missouri SIP received on June 10, 2021. The revisions are to Title 10, Division 10 of the Code of State Regulations (CSR), 10 CSR 10-6.061 “Construction Permit Exemptions”. The purpose of the state regulation is to list specific construction or modification projects that are exempt from the requirement to obtain permits to construct under 10 CSR 10-6.060. Missouri made several revisions to the rule. These revisions to the rule update incorporations by references, remove unnecessary words, and make minor clarifications and grammatical changes. As explained in

detail in the EPA's proposed rule, EPA finds these revisions meet the requirements of the Clean Air Act, do not impact the stringency of the SIP, and do not adversely impact air quality. 87 FR 31966 (May 26, 2022) The full text of the rule revisions as well as EPA's analysis of the revisions are contained in the technical support document (TSD) included in the docket for this action.

## **II. Have the Requirements for Approval of a SIP Revision Been Met?**

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from January 2, 2020, to April 2, 2020, and held a public hearing on March 26, 2020. Missouri received six comments from three sources during the comment period on 10 CSR 10-6.061. The EPA provided four comments. Missouri responded to all comments and revised the rule based on public comment prior to submitting to EPA, as noted in the State submission included in the docket for this action.

In addition, as explained in the proposed rule and in more detail in the technical support document (TSD) which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

## **III. The EPA's Response to Comment**

The public comment period on the EPA's proposed rule opened

May 26, 2022, the date of its publication in the Federal Register and closed on June 27, 2022. During this period, the EPA received one comment from an anonymous commenter. The comment and the EPA's response are below.

Comment: The commenter stated their recommendation is to not permit exemptions as there is too much development and it is time to contract.

EPA's Response: The revision to the Missouri SIP that EPA is approving in this action pertains to construction permitting requirements for minor sources under the New Source Review (NSR) program. For these sources, EPA regulations provide states with discretion to determine which facilities must be subject to permitting requirements to prevent their construction or modification from interfering with attainment and maintenance of National Ambient Air Quality Standards (NAAQS).<sup>1</sup> Thus, states may exempt construction or modification projects producing emissions below a certain emission threshold, as Missouri does in 10 CSR 10-6.061, if the state determines such projects need not be regulated to protect the NAAQS. In an earlier rulemaking action, EPA determined that the exemptions in Missouri's rule are consistent with the federal rule for minor NSR programs.

In 2006, EPA approved Missouri's state rule 10 CSR 10-6.061 which moved previously SIP-approved exemptions from 10 CSR 10-6.060 into this new state rule to increase clarity. (71 FR 38997). The revisions to Missouri's construction permit

---

<sup>1</sup> See 40 CFR 51.160.

exemptions rule that EPA proposed to approve as part of this action are administrative in nature and do not expand the scope of any existing and already SIP-approved exemptions. Revisions of this nature do not reopen the question of whether the previously-approved exemptions should be included. Further, the commenter has not provided information to show how any exempted construction could threaten attainment of the NAAQS. Therefore, the EPA is finalizing the action as proposed.

#### **IV. What Action is the EPA Taking?**

The EPA is amending the Missouri SIP by approving the State's request to revise 10 CSR 10-6.061 "Construction Permit Exemptions."

#### **V. Incorporation by Reference**

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri rule 10 CSR 10-6.061 as described in Section I of this preamble and set forth below in the amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **VI. Statutory and Executive Order Reviews**

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the

provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).
- This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).
- Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60**

**DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 9, 2022.

Meghan A. McCollister,  
Regional Administrator,  
Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

**PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*



## Subpart AA-Missouri

2. In §52.1320, the table in paragraph (c) is amended by  
revising the entry "10-6.061" to read as follows:

### §52.1320 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

### EPA-Approved Missouri Regulations

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * * * *				
Chapter 6 - Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
* * * * *				
10-6.061	Construction Permit Exemptions	9/30/2020	[Insert Date of publication in the Federal Register], [Insert Federal Register citation]	Sections (3) (A) 2.D. and (3) (A) 2.E. (II) (c) are not SIP-approved.
* * * * *				

\* \* \* \* \*

[FR Doc. 2022-17570 Filed: 8/15/2022 8:45 am; Publication Date: 8/16/2022]